IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 6TH MARCH 2007 / 15TH PHALGUNA 1928

Crl.MC.No. 425 of 2007()

CC.1120/2004 of JUDL.MAGISTRATE OF FIRST CLASS-II, ALUVA

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PETITIONER/ACCUSED:

ANWAR MUHAMMED, AGED 32 YEARS,
S/O.MUHAMMED ALI, 55 CHRISTINA STREET,
PERTH, STATE WESTERN AUSTRALIA.

BY ADV. SRI.NOUSHAD THOTTATHIL
SRI.NOORJI NOUSHAD

RESPONDENTS/COMPLAINANT:

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1. STATE OF KERALA, REP. BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

2. MRS.SALEENA.K.K., W/O.ABDUL SAMAD,
KRIPA HOUSE, 6/323, PALLILAMKARA ROAD,
H.M.T.COLONY P.O., KALAMASSERY, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.S.U.NAZER

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 06/03/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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Crl.M.C.No. 425 of 2007

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Dated this the 19th day of February, 2007

O R D E R

Heard. Admitted. The petitioner faces allegations under Section 498A I.P.C. Cognizance has been taken on a protest complaint filed by the second respondent herein, who is the mother of the wife of the petitioner. It is submitted that the marital tie has been dissolved. The petitioner had already entered appearance before the learned Magistrate. He is employed abroad at Australia. The learned Magistrate is insisting on the personal presence of the petitioner. This is unnecessary. Petitioner is represented by a counsel. In these circumstances unnecessary insistence on the personal presence of the petitioner is causing the petitioner great hardship, prejudice and loss. If warrant of arrest were to be issued against the petitioner on the ground that he does not appear personally, that would cause very great hardship and loss to the petitioner, it is submitted. The learned counsel for the petitioner further submits that the petitioner wants to argue for a discharge under Section 245(2) Cr.P.C.

2. Call for a report from the learned Magistrate. The learned Magistrate shall report why insistence is made on the personal presence of the accused. The learned Magistrate shall explain why the plea of discharge under Section 245(2) Cr.P.C. is not considered and the personal presence of the petitioner is insisted to consider such a plea.

3. The report must reach this Court by 5.3.2007. Call on 6.3.2007.

4. There shall be an interim direction that the personal presence of the petitioner shall not be insisted by the learned Magistrate till that date. This interim direction shall not fetter the powers of the learned Magistrate to proceed further in the matter without insisting on the personal presence of the petitioner.

(R. BASANT)
Judge

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